IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. NO. 1488 of 2001

New India Assurance Company Ltd.,
Through its Senior Divisional Manager,
Divisional Office, Bhotia Parao,
Haldwani, District Nainital. ..... Appellant

Versus

Smt. Sajni & others ..... Respondents

Mr. T.A. Khan, learned counsel for the appellant.
Mr. I.P. Kohli, Advocate for the respondents.

Hon. P.C. Verma, A.C.J.
Hon. P.C. Pant, J.

This appeal has been filed by the appellant against the judgment and order dated 30.8.2001 passed by the Motor Accident Claim Tribunal (IV Addl. District Judge) Dehradun in M.A.C. Petition No. 2 of 2000, whereby, a sum of Rs. 10,87,000/- alongwith 9% per annum interest has been awarded in favour of the claimants and against the appellant.

Brief facts of the case are that on 9.12.1999 Ram Pal (deceased) was going from Shyampur to his house situated at Gitanagar, I.D.P.L., Rishikesh at about 7:30 p.m. by his scooter No. U.P. 07C/4368 When he reached at Mansa Devi Tiraha, Haridwar Road, a Vikram bearing No. U.P. 07 C 2063, which was being driven rashly and negligently be its driver, came and dashed the scooter of Ram Pal (deceased), due to which, he sustained serious injuries. He was admitted to Rishikesh S.P.S. Government Hospital from where he was referred to P.G.I. and on 12.12.99 he died die to the injuries sustained in the said accident. It was stated by the claimants that Rs. 40,000/- was spent on his treatment. Ram Pal (deceased) was aged about 29 years at the time of his death and he was earning a sum of Rs. 7,500/- per month as he was employed under the Basic Shiksha Adhikari,

New Tehri. Therefore, a sum of Rs. 26,45,000/- was claimed by the claimants on account of his death being his legal heirs.

A written statement was filed by respondents NO. 6 & 7, in which it has been stated that the amount of compensation as claimed is too high. It is also stated that respondent No. 6 is the registered owner of the Vikram No. UP 07 C 2063, which was fully insured with the appellant i.e. New India Assurance Co. Ltd. and as such, it was stated that the liability to pay the compensation is that of the New India Assurance Co.

A Written statement was also filed by the appellant i.e. New India Assurance Co. Ltd., in which it has been stated that the deceased, himself, was driving his scooter negligently and at a high speed, due to which the accident took place. Therefore, it was stated that the claim of the claimants is liable to be rejected.

On the basis of the pleadings of the parties, following six issues were framed by the Claims Tribunal:

1: Whether on 9.12.99 at about 7:30 p.m. the driver of the Vikram No. UP 07 C 2063 was driving the Vikram rashly and negligently, due to which it dashed Ram pal and he sustained serious injuries because of which he died?

2: Whether at the time of accident, the age of the deceased was 29 years and his monthly income was Rs. 7, 500/-?

3: Whether at the time of accident, the Vikram in question was insured with the New India Assurance Co.?

4. Whether the claimants are entitled to recover Rs. 26,45,000/- as compensation?

5. Whether the accident took place due to the rash and negligent driving by the deceased, himself?

6. To what amount of compensation, the claimants are entitled?

So far as issues No. 1 & 5 are concerned, the same were decided in favour of the claimants and it was held that the driver of the Vikaram No. UP 07 C 2063 was driving the Vikram rashly and negligently, due to which it dashed at Ram Pal and he sustained serious injuries because of which he died on 12.12.1999. So far as the issue No. 2 is concerned, the same was also decided in favour of the claimants and it was held that the deceased was 29 years of age and he was earning Rs. 7,500/- per month as salary. Issue No. 3 was decided against the Insurance Company as it was held that the Vikram in question was fully insured with the New India Assurance Co. With regard to the amount of compensation, the claimants were found entitled to a compensation of Rs. 10,87,000/-. Being aggrieved by the judgment and award of the Motor Accident Claims Tribunal passed in MAC No. 2/2000, this appeal has been filed.

We have heard learned counsel for the parties and gone through the records.

PW2 Shri Jagdish, who is an eye-witness to the said incident has clearly stated in his evidence that on the date of accident the scooter was coming towards Rishikesh from Shyampur and at the time of accident he was standing with his brother outside the Biscuit factory. It was further stated that he along with his brother, took the injured to the Hospital in a Tampo. It was further stated that after dashing the scooter, the vehicle ran away. This witness clearly proves that on 9.12.1999 Vikram No. UP 07 C 2063 dashed the scooter of the deceased Ram Pal. As such the issues No. 1 & 5 were rightly decided by the Claims Tribunal in favour of the claimants.

So far as the issue regarding the age of the deceased is concerned, the evidence on record i.e. Certificate of High School Examination of the deceased clearly proves the age of the deceased to be 29 years. There is no denial of the said document by the other side. As regard his monthly income, the salary certificate of the deceased issued by Basic Shiksha Ashikari is on record, which clearly shows

that the income of the deceased was Rs. 5581/- per month. Further, A.P.W.1 Smt. Sajni Devi has stated in her evidence that her husband was earning a sum of Rs. 2,000/- per month from tuitions and as such , his monthly income comes to Rs. 7,500. It was further stated that the deceased was a man of simple nature without any bad habits. All these facts have not been denied by the other sides.

As to the issue with regard to the amount of compensation, learned counsel for the appellant argued that the amount of compensation awarded by the Claims Tribunal is excessive.

We have gone through the records. The deceased was employed under the Basic Shiksha Adhikari, New Tehri and he was also doing tuitions. The salary certificate of the deceased issued by Basic Shiksha Adhikari in on record , which clearly shows that the income of the deceased was Rs. 5581/- per month. A.P.W.1 Smt. Sajni Devi has stated on oath that her husband was earning a sum of Rs. 2,000/- per month from tuitions and as such, his monthly income comes to Rs. 7,500/-. It was further stated that the deceased was a man of simple nature without any bad habits. This Court has no reason to disbelieve the statement of A.P.W. 1 Smt. Sajni Devi, the wife of the deceased and we are in full agreement with the Tribunal as to the fact that the deceased, at the time of his death, was earning Rs. 7,500/- per month.

It is further argued on behalf of the appellant that the multiplier of 18 has been applied and it is too high.

We are unable to accept the contention of the learned counsel for the appellant for the reason that from the evidence on record, it is clear the age of the deceased was 29 years and he would have earned for himself and for his family, at least for further 18 years and therefore, multiplier of 18 cannot be said to be too high. As such, the assessment of compensation is rightly arrived at Rs. 10,80,000/- after deducting one third of earning. Rest

of the amount of Rs. 7,000/- has been given towards conveyance expenses and consortium.

In view of the above discussion, we find no merit in the present appeal and the appeal is liable to be dismissed.

Accordingly, the appeal is liable to be dismissed. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 01.07.2004
G